

Lacey Realty Company, Inc., Successor to Mills Management, Inc. and International Brotherhood of Firemen and Oilers, Local No. 7, AFL-CIO. Case 14-CA-21154

November 6, 1992

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

On May 9, 1991, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, ordering Respondent Lacey Realty Company, Inc. to make whole certain of its unit employees for loss of earnings and other benefits resulting from their termination in violation of the National Labor Relations Act. On March 24, 1992, the United States Court of Appeals for the Eighth Circuit enforced the Board's Order in its entirety.

A controversy having arisen over the amount of backpay due discriminatees, on June 8, 1992, the Regional Director for Region 14 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer within the time period set out in the compliance specification.²

By letter dated June 30, 1992, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by close of business July 3, 1992, summary judgment would be sought. The General Counsel received no response by July 6, 1992. Consequently, she drafted a Motion for Summary Judgment on compliance specification and notice of hearing and prepared it for service by certified mail.

On July 13, 1992, the General Counsel filed with the Board a motion to transfer proceeding to the Board and for summary judgment, with exhibits attached. On July 15, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

In its response, the Respondent contends that on July 7, before the Motion for Summary Judgment was sent, Respondent's attorney telephoned the General Counsel and explained he had a death in his family, which had caused him to be absent from his office the

week of June 29, 1992, and requested an extension of time in which to file his answer. The Respondent claims that the General Counsel acquiesced and gave the Respondent until the close of business on July 10, 1992, to draft and deliver an answer, but that on July 9, 1992, the General Counsel mailed her Motion for Summary Judgment by certified mail. On July 10, 1992, the Respondent claims it filed its answer with the General Counsel, as agreed.³

The General Counsel, in response, affirms that an additional extension of time was granted the Respondent to file its answer, and states that the Respondent's answer was received in the Regional Office on July 10, 1992, but contends that the further extension was given only to the close of business on July 8, 1992. The General Counsel further contends that the Respondent failed to deny specifically the allegations of the compliance specification as required by Section 102.56(b).

The Respondent's answer generally denies the dates specified as the backpay period, denies that it should pay the calculated amounts of backpay and contributions to the pension fund on behalf of the discriminatees, and requests that the Board order a recalculation of such sums to the discriminatees.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(b) and (c) of the Board's Rules and Regulations provides in pertinent part, as follows:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applica-

¹ 302 NLRB No. 140.

² The Respondent's answer was due on or before June 29, 1992. In the motion, the General Counsel states that messages were left with the Respondent's office on June 29, 1992, and June 30, 1992. In neither of her conversations with the Respondent's office was the General Counsel informed that the Respondent was out of his office for the week.

³ The certificate of service appended to the Respondent's answer states that it was mailed first class on July 10, 1992.

ble premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

The Respondent, despite having been advised of the Board's Rules and Regulations, has failed to file a sufficient answer to the compliance specification. The Respondent's answer provides neither alternative dates for the backpay period nor alternative backpay computations, nor does it state reasons why the discriminatees are not entitled to the backpay and pension fund amounts set forth in the specification. These are matters within the Respondent's knowledge, and its failure to deny the specification in the manner required by Section 102.56(b) or to explain its denials adequately requires that the compliance specification allegations be deemed true in accord with Section 102.56(c).⁴

⁴ See *Hydro Logistics, Inc.*, 301 NLRB No. 95 (Feb. 12, 1991), and *Sneva's Rent-A-Car*, 270 NLRB 1316 (1984).

In the absence of good cause for the Respondent's failure to file a sufficient answer,⁵ we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatees and the pension fund on their behalf is as stated in the compliance specification and we will order payment by the Respondent to the discriminatees and the pension fund.

ORDER

The National Labor Relations Board orders that the Respondent, Lacey Realty Company, Inc., Saint Louis, Missouri, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws, and shall pay the amount of pension fund contributions shown in accord with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979):

	<i>Backpay</i>	<i>Pension Fund</i>
Joseph DiMariano	\$3902.40	\$246.40
Albert Moore	4382.40	246.40
Sylvester Puckett		246.40

⁵ In light of the above conclusion with respect to the sufficiency of the Respondent's answer, which is dispositive of the outcome in this case, we find it unnecessary to address whether the Respondent's answer was filed with the Regional Office in a timely manner.